

<b>IN RE: PETITIONS FOR SPECIAL HEARING *</b>	BEFORE THE
<b>AND SPECIAL EXCEPTION</b>	
(3900 Milford Mill Road) *	OFFICE OF
2 <sup>nd</sup> Election District	
2 <sup>nd</sup> Council District *	ADMINISTRATIVE HEARINGS
Raza-E-Mustafa Islamic Center, Inc.,	
<i>Legal Owner</i> *	FOR BALTIMORE COUNTY
<b>Petitioner</b> *	<b>Case No. 2019-0030-SPHX</b>
* * * * *	

### **OPINION AND ORDER**

This matter comes before the Office of Administrative Hearings (“OAH”) for consideration of Petitions for Special Hearing and Special Exception filed on behalf of Raza-E-Mustafa Islamic Center, Inc., legal owner (“Petitioner”). The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“BCZR”), for approval of various residential uses in a BM zone (located adjacent to DR zone) and to extinguish prior zoning approvals. Specifically, the Petition seeks approval of: **(a)** a Mosque, **(b)** a Sunday School, **(c)** a Multifamily dwelling with 10 units, **(d)** a Multifamily dwelling with 4 units, **(e)** an Open retreat area, and, **(f)** Restored shower and restroom facilities. The Petitioner, at the request of the Department of Planning, also asks to extinguish and abandon: The Order in Case No. 1986-0120-X (Special Exception for Arcade); and, the Order in Case No. 1949-1465-X (Special Permit for Swimming Pool), and for such other relief as deemed necessary. In addition, a Petition for Special Exception was filed pursuant to BCZR § 1B02.1 for a cemetery use and/or funeral establishment if necessary, in the DR 5.5 zoned portion of the property (approximately 11,800 sq. ft.).

The Petition was advertised as required by the Baltimore County Zoning Regulations. Substantive Zoning Advisory Committee (ZAC) comments were received from the Department of Environmental Protection and Sustainability (“DEPS”) and the Department of Planning (“DOP”).

Neither agency opposed the request; however, conditions were proposed.

A virtual on-line public hearing was held via WebEx on June 19, 2020 due to the meeting restrictions imposed as a result of the Covid-19 crisis. Syed Quadry and several other members of the mosque attended the public hearing in support of the requests. J. Neil Lanzi, Esq. represented Petitioner. Licensed Architect, Kathleen Sherrill also attended, as did licensed surveyor, Bruce Doak, who prepared the two page site plan. The site plan was marked and admitted as Petitioner's Exhibit 1. Ms. Sherrill and Mr. Doak were accepted as experts in their fields. Janice Morton-High, Shirley Nelson, and Deborah Banks attended as interested citizens. The Milford Mill Road Community Association, Inc. submitted a letter to Councilman Julian Jones opposing the requested zoning relief due primarily to concerns about increased pedestrian and vehicular traffic. Individual citizens also wrote emails and letters to their Councilman and directly to OAH in opposition to the zoning relief. The primary concerns raised were also related to the anticipated impacts on traffic, as well opposition to the proposed cemetery.

#### RECORD EVIDENCE

The subject property is approximately 18.76 acres in size and is split- zoned DR 5.5 and BM. It is the site of the now defunct Milford Mill Swim Club. There is a natural quarry on the site which was the original swim club. There is also an abandoned in-ground swimming pool, arcade, and bathhouse. The existing structures have fallen into disrepair and have been subjected to some arson and vandalism. Mr. Quadry testified that the Raza-E-Mustafa Islamic Center purchased the property in 2013 and that they have been using one of the buildings as a mosque. He further explained that they wish to expand and modernize the facilities for their religious worship and programs and that they also plan to use a portion of the site as a cemetery for members of the mosque. He explained that they will not be performing any funereal activities on the site, other than the

religious cleansing of the deceased. He anticipates that there will be between five and ten burials a year based on the size of their mosque. Based on the estimates of Mr. Doak and Ms. Sherrill he estimates that there is the capacity for approximately 350 graves at the site. Mr. Quadry further explained that the mosque plans to convert and expand one of the existing structures on the site into a 4 unit multi-family residential structure. Subsequently, as funding permits, they hope to construct a 10 unit multi-family residential structure on the footprint of the existing swimming pool. He anticipates that these structures will be predominantly occupied by members of the Raza-E-Mustafa community. They understand that if any of this housing is offered for commercial lease that they will have to comply with all County, State, and Federal equal housing laws.

Mr. Doak and Ms. Sherrill also testified about the proposed uses of the site and that all uses conform to the applicable zoning restrictions. Mr. Doak explained that all setbacks and parking requirements are in accordance with the BCZR. Doak explained the site plan in detail, describing an aerial view of the property (Petitioner's Exh. 2); photos of the proposed cemetery site (Petitioner's Exh. 3); and, photos and a numbered key showing the various planned improvements at the site, including a new 15,000 sq. ft. Mosque (Petitioner's Exh. 4). Finally, Doak also submitted a "Compatibility Study" (Petitioner's Exh. 5) which was submitted to DOP for their approval under BCC § 32-4-402(c). Mr. Doak testified that based on the acreage and DR 5.5 zoning at the site that it would be feasible to build as many as 106 single family homes on the site. He stressed that the proposed development depicted on the site plan is a very low density use for this site.

Both Doak and Sherrill were questioned by the community members about where the cemetery was going to be located on the site and how it would be operated. They were both also questioned about all the proposed uses at the site and on the parking and traffic impacts. Both these witnesses explained that the impacts on noise and traffic in the area will be much less than those

posed by the former Milford Swim Club. They also explained that the cemetery area will be on the opposite side of the site from the quarry and would have no impact on the water quality of the quarry or on the rest of the site. They also explained that the proposed cemetery, as well as the rest of the site, is well screened from any residences by large, mature trees and other natural landscape features.

At the close of Petitioner's case I heard from Ms. Morton-High, Ms. Shirley Nelson, and Ms. Deborah Banks. These witnesses all testified that they were long-time residents of the neighborhood and that they were concerned with the impacts from this proposed Mosque expansion, including the proposed cemetery. They acknowledged, however, that there used to be substantial noise and traffic impacts when the site housed the Milford Swim Club. They further acknowledged that this proposed use is a much lower density than if the property were developed with single family homes, as permitted under the current DR 5.5 zoning. The letters and emails opposing the Petition will be admitted, collectively, as Protestants' Exh. 1.

#### SPECIAL HEARING

Based on the testimony and exhibits adduced at the hearing, I find that the requested Special Hearing relief can be granted under the authority vested in me by BCZR § 500.7, within the spirit and intent of the BCZR, and without causing harm to the general public's health, safety or welfare.

#### SPECIAL EXCEPTION

Under Maryland law, a special exception use enjoys a presumption that it is in the interest of the general welfare, and therefore, valid. *Schultz v. Pritts*, 291 Md. 1 (1981). The *Schultz* standard was revisited in *Attar v. DMS Tollgate, LLC*, 451 Md. 272, (2017), where the court of appeals discussed the nature of the evidentiary presumption in special exception cases. The court again emphasized a special exception is properly denied only when there are facts and circumstances

showing that the adverse impacts of the use at the particular location in question would be above and beyond those inherently associated with the special exception use. In fact, I find that the proposed low density religious use of the property is an ideal repurposing of this beautiful natural site and that it will enhance the quality of the neighborhood.

Based on the evidence and testimony at the hearing, I find Petitioner has satisfied the requirements of BCZR § 502.1 and the Maryland case law interpreting that provision. I further find that the special hearing and special exception relief can be granted within the spirit and intent of the BCZR and without causing any harm to the general health, safety, and welfare. I have fully considered the numerous conditions requested by the DOP in their comments, and they are well taken. However, even if this proposed development is granted an exemption under B.C.C. § 32-4-106(b)(8) – which of course is an open question - the development will still be subject to review and approval by all the agencies referenced in the DOP comments. Further, Mr. Quadry and Ms. Sherrill both testified that they are fully aware of the environmental, lighting, landscape, signage, and architectural standards they will be held to. In light of this I do not find it necessary to expressly include the DOP comments in this Order.

Finally, under the Religious Land Use and Institutionalized Persons Act (“RLUIPA”), 42 U.S.C. § 2000cc(a)(1) it is unlawful for a local government such as Baltimore County to unduly restrict religious uses when applying its land use regulations. *See, e.g., Jesus Christ is the Answer Ministries, Inc. v. Baltimore County*, 915 F.3d 256 (4<sup>th</sup> Cir. 2019). Based on the record evidence in this case it is my view that a denial of the requested zoning relief would amount to an undue and unjustified burden on the Mosque’s religious uses of the property.

THEREFORE, IT IS ORDERED this **26th** day of **June, 2020**, by this Administrative Law Judge, that the Petition for Special Hearing seeking relief pursuant to § 500.7 of the Baltimore

County Zoning Regulations (“BCZR”), for approval of the following residential uses in a BM zoned (located adjacent to DR zone) and to update prior zoning approvals: **(a)** Mosque, **(b)** Sunday School, **(c)** Multifamily dwelling with 10 units, **(d)** Multifamily dwelling with 4 units, **(e)** Open retreat area, **(f)** Restored shower and restroom facilities, **(g)** Abandon Order in Case No. 1986-0120-X (Special Exception for Arcade), **(h)** Abandon Order in Case No. 1949-1465-X (Special Permit for Swimming Pool), be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Special Exception seeking relief pursuant to BCZR § 1B02.1 for cemetery use in the DR 5.5 zoned portion of the property (approximately 11,800 sq. ft.), be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioner may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioner is hereby made aware that proceeding at this time is at its own risk until 30 days from the date hereof, during which time an appeal can be filed by any party. If for whatever reason this Order is reversed, Petitioner would be required to return the subject property to its original condition.

Any appeal of this decision must be made within thirty (30) days of the date of this Order.

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Signed  
PAUL M. MAYHEW  
Managing Administrative Law Judge  
for Baltimore County

PMM:dlw